IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2006

CORAM

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No. 41101 of 2006 &
M.P.No.1 of 2006

K.Veerapandiyan . . Petitioner

Vs

1.The Secretary to Government
High Way,s Department (HK.1)
Chepauk,
Chennai.

2.The Chief Engineer (General),
High Ways, Department
Chepauk,
Chennai-5.

3.The District Collector,
Villupuram District,
Villupuram. . . Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the claim of the petitioner for promotion as Assistant Divisional Engineer for the year 2005-2006 without reference to the pending disciplinary proceedings initiated by the third respondent in R.O.C.No.5187/99/PA5 dated 5.4.99 and the second respondent in Charge Memo No.11379/Con.2/2003/1 dated 4.8.2004 and promote the petitioner as Assistant Divisional Engineer and grant him all consequential service and monetary benefits.

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For Petitioners : Mr.K.Ventaktaramani

For Respondents : Mr.D.Srinivasan
Government Advocate

O R D E R

The writ petitioner entered into the service of Highways Department on 11.09.80 and he was working as Assistant Engineer

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(Planning) having been promoted on 08.03.95. Subsequently, promoted as Union Engineer; deputed to Panchayat Union service from 12.09.96 to 31.3.2004. During the relevant time, he was working as a Union Engineer at Sankarapuram Panchayat Union and Ulunthurpet Panchayat Union and he is eligible for promotion to the next cadre of Assistant Divisional Engineer for the year 2005-2006.

2. It is also admitted that he was promoted as Assistant Engineer on 08.03.95. While working as Union Engineer in Sankarapuram Panchayat Union, a charge memo was issued against the petitioner by the District Collector, Villupuram, the third respondent herein, on 05.04.99 in respect of the conduct alleged to have been taken place between 1996 and 1999, numbering 7 charges. The petitioner has submitted his explanation on 04.05.99. There was an oral enquiry conducted in respect of the charge memo dated 05.04.99 and the enquiry officer has submitted his report to the second respondent on 31.12.2001. However, no final orders has been passed so far.

3. The case of the petitioner is that that a second charge memo has been issued, containing 4 charges, by the second respondent on 04.08.2004 in respect of the same charges. According to the petitioner, the second charge memo dated 4.8.2004 is in supersession of the earlier charge memo dated 05.04.99. The petitioner has also submitted his detailed explanation for the charge memos dated 05.04.99 and 04.08.2004. The petitioner has also submitted his written statement on the findings of the enquiry officer on 06.04.2006. Therefore, according to the petitioner there are 2 charge memos pending against the petitioner one is dated 05.04.99 and another is dated 04.08.2004. In respect of which enquiry has been conducted and the final order has to be passed. In the meanwhile, a panel for the year 2005-2006 in respect of Assistant Divisional Engineer has to be drawn and taking into account that there is pendency of charges against the petitioner, his name was not included. In these circumstances, the petitioner has filed the present writ petition for a direction against the respondents to consider the petitioner for promotion as Assistant Development Engineer for the year 2005-2006 without reference to the charge memos dated 05.04.99 and 04.08.2004.

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4. I have heard the learned counsel for the petitioner and the learned Government Advocate who has taken notice on behalf of the respondents.

5. Admittedly, in respect of 2 charge memos dated 05.04.99 and 04.08.2004 enquiry has been completed and final orders have to be passed. Pending of these final orders, the petitioner has been denied his right of further promotion.

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6. In view of the position stated above, I am of the considered view, that the first and second respondents should be directed to pass final orders within a stipulated time. It is also made clear as per the judgment of the Honourable Apex Court reported in 1995(2) SCC 570 (State of Punjab and others Vs. Chamman Lal Goyal) wherein the Honourable Apex Court has held that in respect of cases wherein the enquiry is pending for a long time, the employer can be directed to give promotion to the next post to the delinquent without prejudice to the rights of the employer to proceed with the enquiry and subject to the final orders. The operative portion of the above said judgment reads as follows;

> "Applying the balance process, we are of the opinion that the quashing of charges and or the other appointing enquiry officer was not warranted in the facts and circumstances of the case. it is more appropriate and in the interest of justice and as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendancy of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped".

7. In view of the same, in fairness it is required that in the event of the first and second respondent not passing final order on the disciplinary proceedings initiated against the petitioner, as

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directed by the Honourable Supreme Court, I am of the considered view that the respondents should be directed to consider and promote the petitioner to the next post of Assistant Divisional Engineer for the year 2005-2006 if he is otherwise not disqualified. After hearing the learned counsel on both sides. the following order is passed;

i) Respondents 1 and 2 are directed to pass final orders on the disciplinary proceedings initiated against the persons in Roc.No.5187/99/PA5 dated 05.04.99 and Charge memo No.11379/Con.2/2003-1/Dated 04.08.2004 within a period of 8 weeks from the dated of receipt of copy of this order.

ii) It is made clear that in the event the respondents are not passing the final orders within the time stipulated above, they shall consider the petitioner for promotion to the next post as Assistant Divisional Engineer for the year 2005-2006, if he is not otherwise disqualified. Further such promotion shall be made subject to the final orders and without prejudice to the disciplinary proceedings which are pending. With the above observation, this writ petition is disposed of. No costs. Consequently, connected M.P. is closed.

jikr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE SECRETARY TO GOVERNMENT
HIGH WAYS DEPRTMENT (HK.1) CHEPAUK, CHENNAI-5.

2. THE CHIEF ENGINEER(GENERAL)
HIGHWAYS DEPRTMENT, CHEPAUK, CHENNAI -5.

3. THE DISTRICT COLLECTOR,
VILLUPURAM DISTRICT,
VILLUPURAM.

1 cc to the Government Pleader, SR.50868
1 cc to Mr.K.Ventaktaramani, Advocate, SR.50789

ts (co)

dv/3.11.06 W.P.No. 41101 of 2006

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